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Commissioner for Patents
P.O. Box 1450
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on December 3, 2008
Date



Signature

Scott Matthews

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Certificate of E-Filing (1 page)

Comments on Statement of Reasons for Allowance (2 pages)

Part B-Issue Fee Transmittal (1 page)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Dwight O. Rodgers et al.

Application No.: 10/791,311

Confirmation No.: 3526

Filed: March 1, 2004

Art Unit: 2145

For: BANDWIDTH MANAGEMENT SYSTEM

Examiner: M. H. Pollack

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

COMMENTS

In response to the Notice of Allowance dated September 3, 2008, Applicant makes the following Comments on the Examiner's Statement of Reasons for Allowance:

In his statement of reasons for allowance, the Examiner specifically states:

The invention is drawn to a resource distributor *wherein bandwidth distribution is enforced in large part by the client*. In particular, it is determined whether a client is eligible to *send* more data, based not on an issue of lost packets or on average time measures of bandwidth consumption but on the amount of time that has passed since the last successful receipt of a feed data transmission. Notice of Allowability, p. 2 (emphasis added).

Applicant would note that the Examiner appears to have mistakenly stated "send" when he meant to say "receive." As a representative claim, claim 1 specifically states:

... an eligibility system that determines if a client or multiple clients on said network *is eligible to receive* requested feed data transmission from a server or multiple servers on said network based upon an amount of time since last successful receipt of a feed data transmission (emphasis added.)


Thus, the claims clearly require that the eligibility system determines if a client is eligible to receive requested feed data from a server and not whether the client is eligible to send data. Moreover, as it is the client's timing of successful receipt of a feed data transmission that affects eligibility, the bandwidth distribution is not necessarily enforced *by* the client rather than, more accurately, being enforced by the amount and frequency that the client has successfully received data.

Applicant, therefore, asserts that the Examiner's reasons for allowance do not accurately reflect the language of the claims, but that the claims are still allowable because, as the Examiner noted further in his reasons, "the system moves away from time-based managers such as TDMA, as well as common load balancing, QoS and SLA systems which operate on a system of average data rates."

Please charge any fees required or credit any overpayment to Deposit Account 06-2380 under Order No. M067 during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Dated: December 3, 2008

Respectfully submitted,

By 

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